

The Commission should avoid the creation of these increased risks of harm both to Pacific Bell and to our interstate and intrastate ratepayers. Increasing these risks is unnecessary because requiring Pacific Bell to offer both physical and virtual collocation, solely because of Pacific Bell's singular virtual collocation arrangement, will not further the Commission's public interest goals. Accordingly, the Commission should grant Pacific Bell a waiver.

C. Pacific Bell's Physical Collocation Customers Will Face Unreasonable Risk Of Harm

If the federal virtual collocation requirement is applied to Pacific Bell's intrastate arrangement and,

infrastructure so that we are assured the opportunity to recover our costs and able to spread the charges among collocators as demand increases. In order to accomplish this, we charge the first customer using physical collocation in a central office the full cost for construction of the infrastructure. As other collocators enter the central office, we prorate the infrastructure charges among the physical collocators. As many of the potential collocators have pointed out, constructing the infrastructure for physical collocation requires significant expense. The more collocators that share the use of the infrastructure, however, the less each individual collocator has to pay.⁴⁰

If Pacific Bell is required to provide virtual collocation in addition to physical collocation, the demand for collocation in a central office may be spread between physical and virtual collocation, and the physical collocation infrastructure may be under utilized. If so, the customer taking physical collocation will not receive the full benefits of proration that it will receive if all collocation in that office is physical. As a result, the physical collocation customer may pay significantly higher

⁴⁰ For instance, Pacific Bell's central office LSAN01 has estimated physical collocation costs of \$36,199, which spread over four physical collocators is \$9,050 each, after proration. If, however, four collocators enter this office, but 3 use virtual collocation, the one physical collocator will pay the full infrastructure charge of \$36,199.

prices, decreasing the effectiveness of physical collocation for expanded competition.

Given its "federal policy in favor of physical collocation,"⁴¹ the Commission should not unnecessarily create this risk of harm to its policy by applying the federal virtual collocation tariffing requirement in an overbroad manner to types of virtual collocation arrangements that do not further the Commission's goals. Accordingly, the Commission should grant Pacific Bell a waiver for its intrastate virtual collocation arrangement.

IV. CONCLUSION

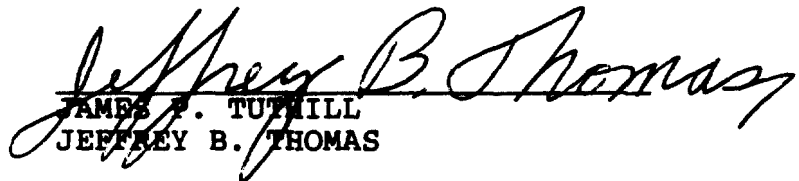
For all the above reasons, the Commission should grant Pacific Bell's petition for expedited waiver of Section 64.1401(c)(1) of the Commission's Rules, which codifies the virtual collocation tariffing requirement, as it applies to

⁴¹ Expanded Interconnection Order, para. 41.

Pacific Bell's singular intrastate virtual collocation
arrangement.

Respectfully submitted,

PACIFIC BELL


JAMES P. TUTTILL
JEFFREY B. THOMAS

140 New Montgomery St., Rm. 1522-A
San Francisco, California 94105
(415) 542-7661

JAMES L. WURTZ

1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 383-6472

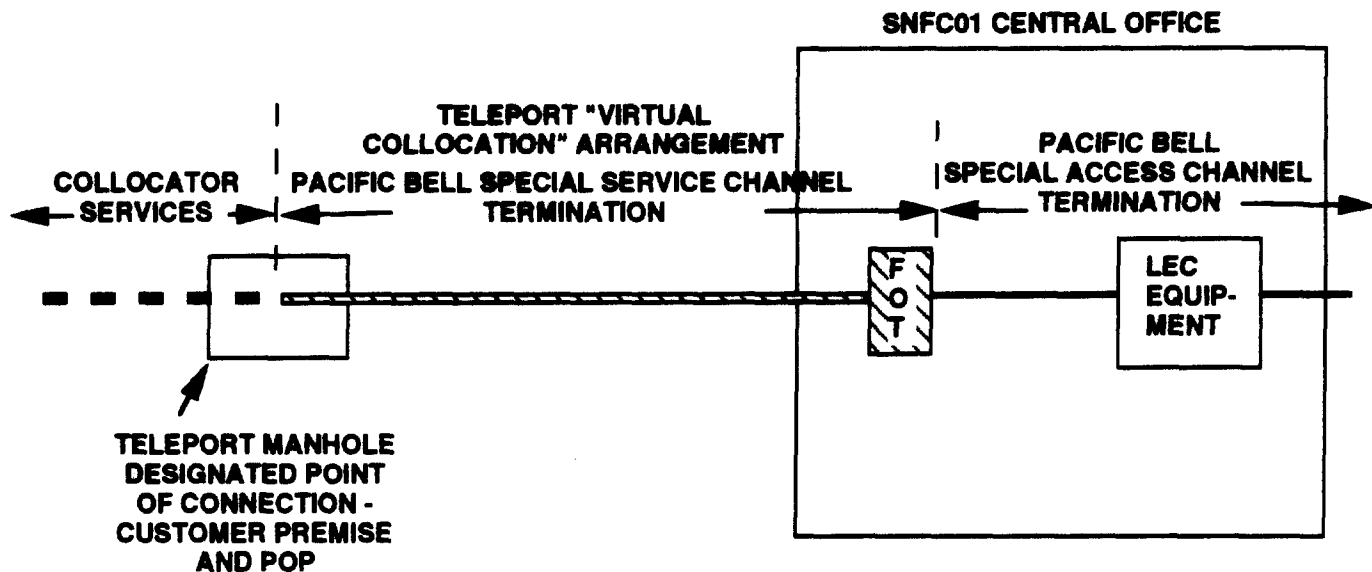
Its Attorneys

Date: July 2, 1993

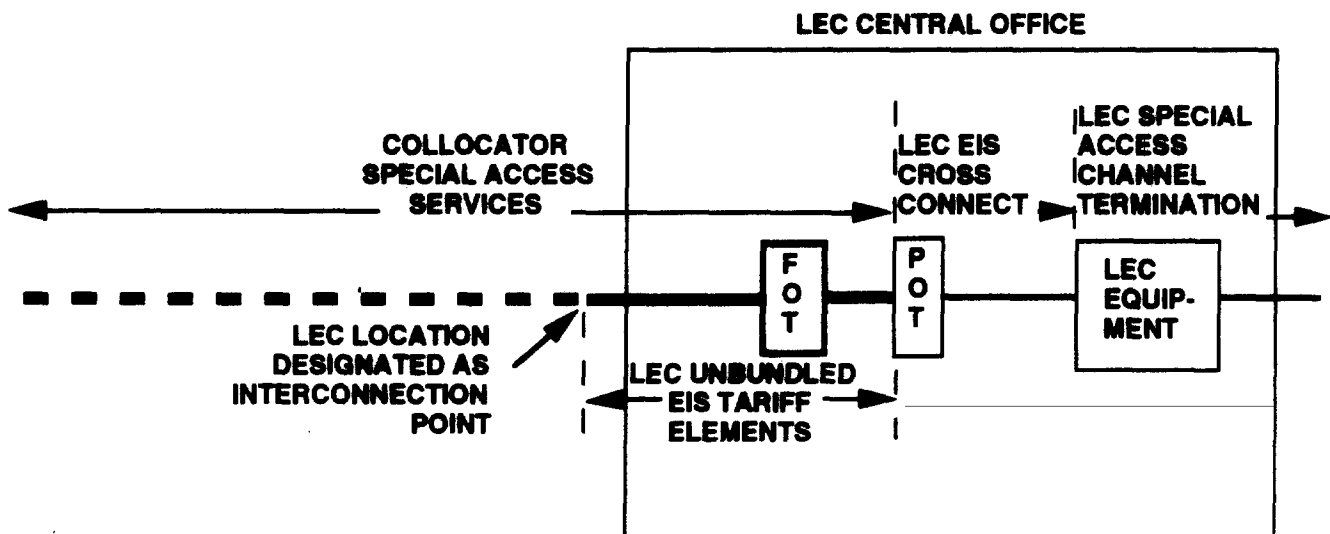
EXHIBIT A

VIRTUAL COLLOCATION ARCHITECTURES

TELEPORT SETTLEMENT - VIRTUAL COLLOCATION CPUC JURISDICTION



EXPANDED INTERCONNECTION - VIRTUAL COLLOCATION FCC JURISDICTION



- COLLOCATOR FACILITIES - COLLOCATOR SERVICE NETWORK
- "VIRTUAL COLLOCATION" FACILITIES - COLLOCATOR SERVICES NETWORK
- - - "VIRTUAL COLLOCATION" FACILITIES - PACIFIC BELL SERVICE NETWORK
- LEC FACILITIES - LEC SERVICE NETWORK

EXHIBIT B

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own Motion into the Establishment)
of a Forum to Consider Rates,)
Rules, Practices and Policies of)
Pacific Bell and GTE California)
Incorporated)
_____)

I.90-02-047
No.0001

JOINT MOTION OF TELEPORT COMMUNICATIONS GROUP
AND PACIFIC BELL FOR THE ADOPTION OF SETTLEMENT AGREEMENT

TELEPORT COMMUNICATIONS GROUP
~~TELEPORT COMMUNICATIONS SAN FRANCISCO INC~~ (U-5162-2)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Investigation on the Commission's)	
own Motion into the Establishment)	
of a Forum to Consider Rates,)	I.90-02-047
Rules, Practices and Policies of)	No.0001
Pacific Bell and GTE California)	
Incorporated)	
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JOINT MOTION OF TELEPORT COMMUNICATIONS GROUP
AND PACIFIC BELL FOR THE ADOPTION OF SETTLEMENT AGREEMENT

Pursuant to Rule 51.1(c), Teleport Communications
Group ("Teleport") and Pacific Bell ("Pacific") hereby
jointly move that the California Public Utilities Commission
(the "Commission") adopt the attached Settlement Agreement

[REDACTED]

October 18, 1990, Teleport and Pacific circulated an Application for Exchange Access Service which reflected Pacific's and Teleport's agreement to date (the "Stipulation") and provided notice to interested parties of a settlement conference pursuant to Rule 51.1(b) of the Commission's Rules of Practice and Procedure to be held at the same time and place as the next scheduled prehearing conference in this matter. The Stipulation reflected a settlement between Teleport and Pacific of all disputed issues except for the price Pacific would charge to provide the services requested by Teleport and to install the equipment requested by Teleport.

On October 26, 1990, interested parties provided their comments to and engaged in discussions with Teleport and Pacific regarding the Stipulation. On the same date, the ALJ established a schedule to hold hearings commencing on March 11, 1991 on the issue of the appropriate pricing for the arrangements contemplated by the Stipulation. In a joint motion dated November 1, 1990, Teleport and Pacific filed with the Commission a motion for the Commission's adoption of the Stipulation, as modified to reflect some of the comments of the interested parties. Thirty days thereafter interested parties filed comments on the Stipulation, and Pacific subsequently filed reply comments.

After the commencement of discovery, but prior to the filing of any testimony, Teleport and Pacific renewed their attempts to arrive at a more comprehensive settlement and requested the ALJ to defer the scheduled hearings. The Settlement Agreement reflects Teleport's and Pacific's settlement of disputed issues. On May 8, 1991, Teleport and Pacific jointly filed a motion for the Commission's approval of the Settlement Agreement which is the same, but for the date and re-execution, as the Settlement Agreement filed herewith.

On June 7, 1991, Metropolitan Fiber Systems of California, Inc. ("MFS") and the Division of Ratepayer Advocates ("DRA") submitted comments on the Settlement Agreement, pursuant to Rule 51.4. MFS alleged, among other things, that the Commission should not approve the Settlement Agreement because Teleport and Pacific failed to convene a second settlement conference in this proceeding which it claimed was required by Rule 51.1(b). On June 24, 1991, Pacific and Teleport separately filed responses to MFS' comments. On July 29, 1991, the presiding ALJ ruled that Teleport and Pacific must hold a second settlement conference and should withdraw their joint motion filed on May 8, 1991.

On August 2, 1991, Teleport and Pacific withdrew their Joint Motion filed on May 8, 1991, and provided notice by facsimile (followed by service by mail) to all parties on the service list of a second settlement conference to be held on August 9, 1991. Representatives of the following parties attended the second settlement conference held on August 9, 1991 at the offices of Morrison & Foerster in person: Teleport, Pacific, AT&T, GTE of California, Inc. ("GTEC"), Associated Communications of Los Angeles Inc. ("ACLA"), and Mtel Digital Services ("Mtel"). In addition, representatives of the following parties attended by conference call: DRA, MFS and the U.S. Department of Defense and all other Federal Executive Agencies (collectively, "DoD/FEA").

II POSITION OF THE PARTIES

The settlement conference held on August 9, 1991 was extensive, during which the parties freely asked questions of Pacific and Teleport, received responses and stated their respective positions with respect to the proposed Settlement Agreement. The following summarizes the understanding of Teleport and Pacific with respect to the major positions of the parties and the discussion at the settlement conference held on August 9, 1991:

DRA stands on its comments filed on June 7, 1991, based on Teleport's and Pacific's representation that the

draft Settlement Agreement served with the notice of the August 9, 1991 settlement conference was the same the Settlement Agreement filed by Teleport and Pacific on May 8, 1991.

GTEC, AT&T, ACLA and Mtel noted that they were not parties to the settlement, did not view it as precedential, did not waive any of their rights, and neither supported nor opposed the Settlement Agreement.

The DoD/FEA favors wide competition by as many entrants as possible, and viewed the Settlement Agreement as flawed because it did not establish the availability of similar interconnection arrangements for other competitors such as MFS.

MFS reiterated the objections it articulated in its comments filed on June 7, 1991. MFS also voiced the following concerns and questions:

1. The Settlement Agreement is a one-time, one-party agreement. The interconnection arrangement should be generally tariffed, not an SSA.

2. Are the charges agreeable to Teleport, which are contained as a part of the Settlement Agreement, cost-based? If so, on what cost methodology are they based and is Pacific willing to share the cost data with MFS?

3. Could MFS obtain the same interconnection arrangement at the same price? Do the charges proposed for

Teleport include any element of "contribution?" Would Pacific seek a contribution component in its pricing of a similar interconnection for MFS?

4. Why is the Settlement Agreement not precedential; by not being precedential it is discriminatory and would require competitors such as MFS to commence negotiations for such interconnection with Pacific from "ground-zero."

5. Why is Teleport precluded under the agreement from opposing the adoption downward pricing flexibility for Pacific's competitive services to the level of incremental costs? Would other competitors seeking similar interconnections be required to enter into a similar stipulation?

6. Can such an interconnection facility be used by Pacific's competitors to provide other services such as PBX trunks, centrex lines, direct inward dialing, etc.?

Pacific and Teleport responded as follows to the DoD/FEA's and MFS's concerns:

The SSA attached to the Settlement Agreement reflects a unique interconnection agreement requested by Teleport. In its 175-T tariffs, Pacific has tariffed numerous SSAs, consistent with long-standing Commission practice. The SSA in this case, as in other cases, reflects unique circumstances which do not lend themselves to general

tariffing. Pacific stated it can better serve its customers unique needs by providing SSA's for each individual arrangement rather than tariffing a general arrangement. Pacific is under a statutory duty not to unreasonably discriminate in its prices, policies or practices. Absent intervening changes in regulatory policies of the CPUC or the FCC, changes in business conditions such as the cost of

propose to MFS. The Settlement Agreement and the SSA provides for a virtual collocation arrangement, in which respect the Settlement Agreement is a first.

Teleport noted that Rule 51.8 made the Commission's adoption of Settlement Agreements non-precedential. However, Teleport also noted that the Settlement Agreement, in addition to the SSA, requires Pacific, as a contractual matter, to also provide similar interconnections using other equipment of Teleport's choice, at other COs, and at prices to be negotiated by the parties in good-faith. (These prices may be litigated in Phase III of I.87-11-033.) It was noted that the incremental cost standard was consistent with Commission decisions, and that Teleport's stipulation to not oppose Pacific's requests for downward pricing flexibility based on incremental costs for competitive services was merely an acknowledgement of Commission policy. Pacific noted that Teleport had not waived its right to argue about what constitutes incremental costs in general or in Pacific's case and that absent Teleport's limited waiver, Pacific may have sought to litigate the incremental cost issue fully in this proceeding.

With respect to the connection of other services, Teleport and Pacific believe that the Settlement Agreement and attachments speak for (see Attachment 4 to the SSA) themselves.

III. SUPPORTING STATEMENT

The Settlement Agreement reflects the agreement between Teleport and Pacific regarding the terms and conditions of a particular interconnection between the two parties. The Settlement Agreement reflects compromises on the part of Teleport, the petitioner, and Pacific, a protestant to the petition. The Settlement Agreement is in the public interest because it (i) limits further litigation over contentious and complex issues; (ii) provides Teleport with the ability to order the electronic equipment of its choice to be connected at the Pacific central office ("CO") end of the fiber link between Teleport's point of presence ("POP") and Pacific's CO; and (iii) provides Teleport the ability to monitor and control the link between its POP and Pacific's CO. Consequently, the Settlement Agreement is a substantial step in the direction of enabling Teleport to better serve its customers. Perhaps more importantly, approval of the Settlement will at long last permit the customers of Teleport to receive service.

MFS has raised arguments that the unique interconnection proposed here¹ should be made generally

1 Which involves construction by Teleport of fiber optic cables, interconnection of those cables to specified equipment in the Pacific CO, and other complex features specific to this individual installation.

available pursuant to tariff provisions other than those of Pacific Tariff 175-T applicable to SSAs. These arguments ignore three important considerations:

1. The very concept of an SSA (i.e., a Special Service Arrangement) is that an SSA is individualized, and thus not susceptible to general tariffing.
2. Neither Pacific nor Teleport opposes the availability to MFS or any other party of similar interconnection on similar terms and conditions.
3. Section 453 (a) of the Public Utility Code precludes Pacific from discriminating in favor of Teleport vis a vis any other party desiring such an interconnection.²

Thus, if in the future MFS or any other party felt that the interconnection which is the subject of this Settlement caused that party prejudice or disadvantage, it would be free to pursue appropriate relief before the Commission. MFS and other parties were invited by Pacific

awaiting such a request. Neither MFS nor DoD/FEA raised any issues at the August 9, 1991 settlement conference which had not been raised in MFS' June 7, 1991 Comments and thus neither Pacific nor Teleport is aware of any reason to modify the Settlement Agreement as filed with the Commission on May 8, 1991.

The Commission should note that the Settlement Agreement involves the implementation of what was termed "virtual collocation" in the Teleport petition commencing this proceeding. This represents a substantial step toward implementation of more meaningful intralata competition in accord with the Commission's policies. Several issues of importance regarding such competition, with important consequences to Pacific, its intralata competitors, and the public remain to be finally resolved. This should not be allowed to impede the implementation of a progressive step in the right direction.

In short, the principles embodied in the Settlement Agreement are favorable for competitors and competition in the intraLATA marketplace. Pursuant to Paragraph 12 of the Settlement Agreement, the Settlement Agreement will be

effective upon filing of the Settlement Agreement 3

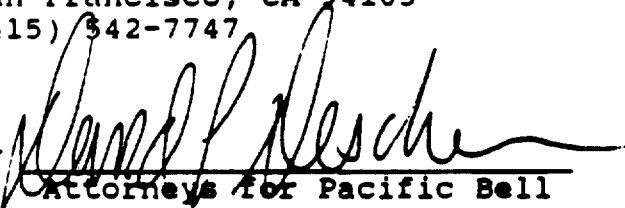
WHEREFORE, Teleport and Pacific request that the Commission expeditiously issue a decision approving the Settlement Agreement.

Dated: August 19, 1991

Respectfully submitted,

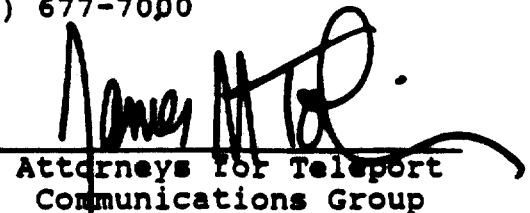
Marlin D. Ard
David P. Discher
140 New Montgomery Street,
Room 1510
San Francisco, CA 94105
(415) 342-7747

By


Attorneys for Pacific Bell

James M. Tobin
Dhruv Khanna
Morrison & Foerster
345 California Street
San Francisco, CA 94104
(415) 677-7000

By


Attorneys for Teleport
Communications Group

PROOF OF SERVICE BY MAIL
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(CCP 1013a, 2015-5)

SERVICE LIST 1.90-02-047 0001

Mary M. Adu
CALIFORNIA PUBLIC UTILITIES
COMMISSION
505 Van Ness Ave., Fifth Floor
San Francisco, CA 94102

Michael Amato
CALIFORNIA PUBLIC UTILITIES
COMMISSION
505 Van Ness Avenue, Room 4012
San Francisco, CA 94102

Jeffrey F. Beck, Atty.
BECK, YOUNG, FRENCH & ACKERMAN
One Market Plaza
1400 Steuart Tower
San Francisco, CA 94105

E. Garth Black/Mark P. Schreiber
Attorneys at Law
COOPER, WHITE & COOPER
101 California Street, 16th Fl.
San Francisco, CA 94111

Jeffery Blumenfeld/Glenn B.
Manishin
BLUMENFELD & COHEN
1615 "M" Street, N.W., Ste. 700
Washington, D.C. 20036

William H. Booth
Joseph S. Faber
JACKSON, TUFTS, COLE & BLACK
650 California Street, Ste. 3130
San Francisco, CA 94108

Stephen P. Bowen, Esq.
General Counsel
BAY AREA TELEPORT
1141 Harbor Bay Parkway
Alameda, CA 94501

Kevin Coughlan
CALIFORNIA PUBLIC UTILITIES
COMMISSION
505 Van Ness Avenue, Rm. 3203
San Francisco, CA 94102

Ellen Deutsch
THELEN, MARRIN, JOHNSON & BRIDGES
Two Embarcadero Center
San Francisco, CA 94111-3995

Randolph W. Deutsch, Atty.
AT&T COMMUNICATIONS OF CALIFORNIA
795 Folsom Street, Rm. 625
San Francisco, CA 94107

David P. Discher
PACIFIC BELL
140 New Montgomery, Room 1510
San Francisco, CA 94105

Robert J. Gloistein, Atty.
ORRICK, HERRINGTON & SUTCLIFFE
Old Federal Reserve Bank Bldg.
400 Sansome Street
San Francisco, CA 94111

William G. Irving, Atty.
COUNTY OF LOS ANGELES
1100 North Eastern Ave., Ste. G-14
Los Angeles, CA 90063

ALJ Evelyn Lee
CALIFORNIA PUBLIC UTILITIES
COMMISSION
505 Van Ness Avenue, Rm. 5019
San Francisco, CA 94102

Andrew D. Lipman/Russell M. Blau
SWIDLER & BERLIN, CHARTERED
Suite 300
3000 K Street, N.W.
Washington, D.C. 20007

Tom Long
TURN
625 Polk Street
San Francisco, CA 94102

Martin A. Mattes
GRAHAM & JAMES
One Maritime Plaza, Ste. 300
San Francisco, CA 94111

Helen M. Mickiewicz
CALIFORNIA PUBLIC UTILITIES
COMMISSION
505 Van Ness Avenue, Room 5131
San Francisco, CA 94102

Kenneth K. Okel/Robert
Herrera/Janet S. Wong
GTE CALIFORNIA INCORPORATED
One GTE Place, RC 3300
Thousand Oaks, CA 91362-3811

Carrington F. Phillip
Assistant General Counsel
CALIFORNIA CABLE TV ASSN.
P.O. Box 11080
Oakland, CA 94611

Barry A. Ross
CALIFORNIA TELEPHONE ASSN.
1900 Point West Way, Ste. 215
Sacramento, CA 95815

Earl Nicholas Selby, Esq.
LAW OFFICES OF E.N. SELBY
420 Florence Street, Ste. 200
Palo Alto, CA 94301

William Shaffran
Office of City Attorney
CITY OF SAN DIEGO
525 "B" Street, Ste. 2100
San Diego, CA 92101-4411

David A. Simpson
DINKELSPIEL, DONOVAN & REDER
One Embarcadero Center, 27th Floor
San Francisco, CA 94111

Cecil O. Simpson, Jr., Atty.
U.S. DEPARTMENT OF ARMY, LITIGATION
CENTER
901 North Stuart Street, Room 400
Arlington, VA 22203-1837

Judith St. Ledger-Roty, Atty.
REED, SMITH, SHAW & McCLAY
1200 18th Street, N.W.
Washington, D.C. 20036

Norman T. Stout
NORTHERN TELECOM, INC.
2305 Camino Ramon
San Ramon, CA 94583

J.M. Tobin/D. Khanna
MORRISON & FOERSTER
345 California Street
San Francisco, CA 94104

Christopher R. Ungson
CENTEX TELEMAGEMENT, INC.
185 Berry Street, Ste. 5100
San Francisco, CA 94107

SETTLEMENT AGREEMENT AND REVISED STIPULATION

This Settlement Agreement and Revised Stipulation is entered into by and between Pacific Bell ("Pacific") and Teleport Communications Group ("TCG") (collectively referred to as the "Parties") on August 19th, 1991.

RECITALS

1. TCG filed a Petition to Require Pacific Bell to Modify Special Access Tariffs and Practices in I.90-02-047 on April 16, 1990 (the "Petition").

2. Pacific filed a Protest and Comments on the Petition on May 21, 1990.

3. On November 1, 1990, Pacific and TCG filed a "Joint Motion for the Adoption of Stipulation" (the "Stipulation") which resolved the terms and conditions pursuant to which Pacific would provide interconnection to TCG, with the exception of the price to be charged for the installation of electronic equipment (and related services) requested by TCG.

4. Since November 1, 1990, TCG has requested Pacific to provide and Pacific has agreed to provide electronic equipment different from the equipment referred to in the Stipulation, the price of which (including related services) Pacific and TCG have found mutually agreeable.

Pacific and TCG have also agreed on the other terms and conditions applicable to this revised form of interconnection.

5. This Settlement Agreement and Revised Stipulation supersede the Stipulation. TCG and Pacific desire to settle the issues raised by the Petition pursuant to the terms of this Settlement Agreement and Revised Stipulation, subject to the approval of the California Public Utilities Commission (the "Commission").

AGREEMENT

In exchange for the mutual covenants contained herein, the Parties agree as follows:

1. Pacific agrees to provide interconnection to Teleport Communications San Francisco, Inc., an affiliate of TCG, on the rates, charges and other terms and conditions set forth in the "Application for Exchange Access Service and/or Facilities Hubbing" attached hereto as Exhibit A (the "SSA"). The SSA reflects an agreement between Pacific and TCG with respect to a particular interconnection involving the construction and installation of certain fiber optic cable and the placement of certain AT&T electronic equipment, which may be subject to reuse by Pacific at the termination of the SSA, at a Pacific Central Office ("CO"). Hereafter, TCG may desire that Pacific provide interconnections functionally similar to the SSA using